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Written statement* submitted by the Asian Legal Resource Centre, a non-governmental organization in general consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[15 February 2016]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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PAKISTAN: Government undermines the people's Right to Life

The Asian Legal Resource Centre (ALRC) would like to draw the UN Human Rights Council's attention to the deteriorating human rights conditions in Pakistan, particularly regarding the right to life. The lifting of the moratorium on the death penalty has led to the execution of more than 350 people, the vast majority of whom were not convicted of terror offences. Initially reserved for terror convicts, the death penalty was extended to all capital crimes, including kidnapping and murder, on 10 March 2015, at the behest of the military establishment.

Pakistan's lifting of the moratorium on the execution of death sentences while its criminal justice system is mired in corruption and injustice is a complete travesty. Exercising the death penalty in an already intolerant society is clearly a populist move rather than a deterrent to crime and terror. Confessions obtained through torture are the basis upon which the Anti-Terrorism and Sessions Courts are handing down death sentences. Blind to justice and international norms, these Courts have been awarding death sentences to minors and even the mentally and physically challenged.

Federal Interior Minister Chaudhry Nisar Ali Khan announced that executions will at least double in 2016; it can thus be estimated that three or more persons will be hung daily. These executions will colour the entire year.

Pakistan is believed to have the largest number of death row inmates in the world. According to the government, in October 2015, 6,016 prisoners were awaiting execution; other estimates, are however higher, putting the number close to 8,000. Up to 1,000 people convicted as juveniles are facing execution. Executing juvenile convicts is illegal under international law. Proving age in Pakistan can be difficult, particularly in poor communities, where many births are not registered.

In June 2015, Aftab Bahadur was hanged in Kot Lakpat Jail. He was sentenced to death on murder charges when he was 15-years-old. According to Aftab, the police asked for a 50,000 Rupee bribe when he was arrested, and said that they would let him go if he paid up. Pakistan's labyrinthine and archaic investigation and prosecution makes it an uphill task for a person wrongfully convicted to prove his innocence. Furthermore, confessions are extracted using third degree torture, resulting in the miscarriage of justice.

The state of the country's criminal justice system is such that it is used to punish the underprivileged and vulnerable, the very group it is meant to protect. Take the case of Khizar Hayat, a schizophrenic, whose mental state deteriorated due to 17 years spent on death row in Pakistan. Due to relentless civil society efforts, the execution of Khizar's death warrant was delayed to allow for a proper medical evaluation. But the State remains determined to hang him till his death.

A paraplegic, 43-year-old Abdul Basit, also faces the gallows. A wheelchair bound prisoner at Lahore Jail, Basit was convicted and sentenced to death for murder in 2009. In 2010, he contracted tubercular meningitis in prison. The prison authorities did not provide him sufficient health care, which left him paralysed from the waist down. Despite a government-appointed medical board having confirmed the continuing severity of his condition, last month, a "black warrant" was issued for his execution.

Khizar and Abdul Basit's death warrants are in violation of the UN Convention on the Rights of Persons with Disabilities, which Pakistan ratified in 2011. The UN Commission on Human Rights adopted resolutions in 1999 and 2000 urging countries that retain the death penalty not to impose it "on a person suffering from any form of mental disorder". Additionally, Section 84 of the Pakistan Penal Code excludes from criminal punishment any person demonstrating "disorder of his mental capacities".

Muhammad Anwar was a minor at the time of his alleged crime. He then spent 23 years on death row, a time that exceeds a life sentence. Following two heart attacks in jail, Anwar is now paralysed in his left hand and leg. While his execution has been temporarily halted due to international pressure, another minor at the time of his accused crime, Saqi Shah was not so lucky. Saqi was charged with the murder of a person from a militant and banned organization at the age of 16. He spent 23 years in prison, 20 of which were in a "death cell" of Adiala Prison, before being executed.

Four teenagers were hung in Pakistan in 2015, despite the plea from their lawyers and human rights organizations that they were under 18 years at the time of their alleged crime. Aftab Bahadur Masih, Ansar Iqbal, Syed Saqı Shah, and Shafqat Hussain had already served two decades behind bars before being hanged. The courts disregarded all evidence pertaining to their age before doling out the death sentences. In the case of Shafqat Hussain, the court refused to allow his lawyer more time to furnish evidence related to his exact age. The executions violate the prohibition on the execution of juveniles set out in Article 6 of the ICCPR and Article 37 of the UN Convention on the Rights of the Child.

Article 9 of the Constitution states, "No Person shall be deprived of life or liberty save in accordance with law," yet the country's civilian and military courts are sentencing people without following due process. Even the façade of the rule of law has taken a back seat as the State gropes in the dark to deter terrorism with judicial and quasi-judicial terror.

The government of Pakistan has decided to execute 8,000 prisoners before the general elections of 2018 to claim that it has followed the rule of law. When the moratorium was lifted, the government promised that hangings would help deter Islamist militants, yet less than one in six executions were linked to militancy. This is a clear violation of Article 6(2) of the ICCPR, which states, "In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime."

The right to life is a supreme and inalienable right, and any exception to it must be narrow and well founded. The death penalty legitimizes an irreversible act of violence by the State and will inevitably claim innocent victims. As long as human justice remains fallible, the risk of executing the innocent can never be eliminated. Surveys and studies conducted by the United Nations and others show that capital punishment does not deter crime. On the other hand, an increase in the likelihood of being caught and rehabilitation for first-time offenders are certainly deterrence. The focus on punishment takes the State's attention away from these other important goals.

In light of these realities, the Asian Legal Resource Center recommends:

a) The United Nations makes the Council membership of Pakistan conditional – on halting executions of those not involved in terrorism and on death row since 1990.
b) The government of Pakistan re-establishes a moratorium on all further executions;
c) The government of Pakistan respects the right to life of every citizen and ensures that due process is followed in any legal measure restricting this right;
d) The State of Pakistan re-engineers and overhauls its archaic criminal justice institutions ushering in a humane and judicious system that uses forensics and modern methods of investigation.